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Ontario. Consolidated Hearings Act, 1981.

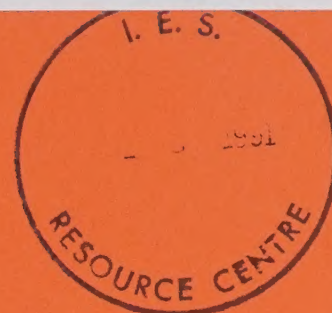
CH-87-02 (FAZ)

IN THE MATTER OF AN UNDERTAKING BY ONTARIO WASTE
MANAGEMENT CORPORATION TO ESTABLISH A HAZARDOUS WASTE
MANAGEMENT TREATMENT AND DISPOSAL SYSTEM... 1991.

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Ontario



The Joint Board THE CONSOLIDATED HEARINGS ACT, 1981

CH-87-02 (FAS)

OWMC - SUPPLEMENTARY FUNDING - II

IN THE MATTER OF an undertaking by Ontario Waste Management Corporation to establish a hazardous waste management treatment and disposal system for Ontario consisting of physical/chemical treatment facilities, incineration facilities, waste residue treatment facilities, a shallow entombed landfill and general facilities to be established in the Township of West Lincoln, in the Regional Municipality of Niagara and a planning program for the planning, siting, design and operation of waste transfer stations in Ontario and for the enhancement of the waste hauling industry respecting the collection and transportation of wastes within the whole of Ontario;

- and -

IN THE MATTER OF the Intervenor Funding Project Act, S.O. 1988, c. 71.

BEFORE: D.J. Kingham, G.I. Thomson and
B.L. Doherty (dissenting in part)

Decision and Reasons for Decision dated June 17, 1991

2300 Yonge Street

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Toronto, Ontario M4P 1E4

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OFFICE OF CONSOLIDATED HEARINGS**REASONS FOR DECISION AND DECISION - SUPPLEMENTARY FUNDING**

IN THE MATTER OF the Consolidated Hearings Act, 1981, S.O. 1981, c.20, and the regulations thereunder;

AND IN THE MATTER OF the Environmental Assessment Act, R.S.O. 1980, c.140, as amended;

AND IN THE MATTER OF Sections 27 and 30 of the Environmental Protection Act, R.S.O. 1980, c.141, as amended;

AND IN THE MATTER OF Sections 10(1) and 14 of the Lakes and Rivers Improvement Act, R.S.O. 1980, c.229;

AND IN THE MATTER OF Section 28(3) of the Conservation Authorities Act, R.S.O. 1980, c.85 and O.Reg. 82/86, Section 4;

AND IN THE MATTER OF Sections 23 and 24 of the Ontario Water Resources Act, R.S.O. 1980, c.361, as amended S.O. 1988, c.54, Sections 65 and 66;

AND IN THE MATTER OF Sections 6, 7 and 8 of the Expropriations Act, R.S.O. 1980, c.148;

AND IN THE MATTER OF the Intervenor Funding Project Act, 1988, S.O. 1988, c.71;

AND IN THE MATTER OF Section 7 of the Ministry of Government Services Act, R.S.O. 1980, c.279;

AND IN THE MATTER OF Sections 3, 4, 14, 15, 16 of the Ontario Waste Management Corporation Act, 1981, S.O. 1981, c.21;

AND IN THE MATTER OF Orders-In-Council, 1707/84 and 1779/85;

AND IN THE MATTER OF an undertaking by Ontario Waste Management Corporation to establish a hazardous waste management treatment and disposal system for Ontario consisting of physical/chemical treatment facilities, incineration facilities, waste residue treatment facilities, a shallow entombed landfill and general facilities to be established in the Township of West Lincoln, in the Regional Municipality of Niagara and a planning program for the planning, siting, design and operation of waste transfer stations in Ontario and for the enhancement of the waste hauling industry respecting the collection and transportation of wastes within the whole of Ontario;

REASONS FOR DECISION AND DECISION - SUPPLEMENTARY FUNDING - II

On April 19, 1991, the Joint Board issued its decision on applications by the tri-parties (the Region, the Coalition and the Township of West Lincoln (TWL)) for supplementary funding under s. 12 of the *Intervenor Funding Project Act* (IFPA). In a number of areas, the Board did not award funding because of inadequate information; where funding was not awarded for this reason, the applications were dismissed without prejudice, to be reconsidered when the necessary information was provided.

The Board has now received further and lengthy submissions from the tri-parties: two submissions from the Region, dated June 6, 1991 and June 12, 1991; a submission from the Coalition dated June 6, 1991; and a submission from TWL delivered June 10, 1991.

The Ministry of the Environment (MOE) commented on the tri-parties' submissions by letter dated June 14, 1991.

The proponent, OWMC, did not oppose the requests for further funding and made no submissions on the tri-parties' submissions.

The Board has considered the further information, and has determined what further supplementary funding ought to be awarded.

One of the findings of the Board in its April 19, 1991 decision that is important in understanding the discussion that follows is that the tri-parties co-operate with each other in opposing the proponent's application; from what the Board had seen, the tri-parties have been presenting one case through three counsel.

I. LEGAL FEES

1. Coalition

The Coalition provided two approaches to quantifying its funding needs: (1) it described what work done by counsel was not anticipated at the time of the original (Order in Council) funding application and what time that work required, and (2) in the alternative, it projected its needs to the end of Phase V. There was little difference between the two approaches in result: under the first approach, the Coalition calculated that \$87,282.19 (plus travel time) would replenish the fund provided by the original award; under the second approach, it determined that \$89,027.18 (plus travel time) would be needed to take it to the end of Phase V.

The first approach more closely accords with the principles put forward in the Board's April 19, 1991 decision, which principles the Board re-affirms in this decision. The Board accepts the summary compilation at p. 5 of the Coalition's submission. It had some difficulty with category six, "Coordination/Organization Matters relating to Experts", for the reason

expressed at p. 13 of its April 19, 1991 decision¹; it allows this item, however, on the basis that the unanticipated witness costs due to changes in the proponent's case, as described in the Region's submission, might have been even greater absent the creation of the "fourth intervenor" (the tri-parties' collective expert witness fund).

With respect to travel time, the Board's April 19 decision awarded travel time on a *pro rata* basis, at a rate (\$45.65) which was blended to reflect the change in counsel's hourly travel rate (from \$43.00/hr to \$48.37/hr) over the time the travel was incurred. The Board has used the same approach here.

Accordingly, it awards the Coalition the following, for legal costs:

Fees, 983.9 hrs x \$75.37/hr	\$74,156.54
Disbursements, @ 10% of fees	7,415.65
Travel, 70.5 hrs x \$45.65/hr	<u>3,215.74</u>
Total	84,787.93
 GST @ 7%	 <u>5,935.15</u>
TOTAL	\$90,723.08

The Coalition's calculations have taken into account the April 19, 1991 award and this award is *in addition to* that award.

2. Region

In its first submission (dated June 6, 1991) the Region provided the Board with the following: an account of how legal funds had been spent to date, an estimate of what was needed for the remainder of the hearing, and a detailed critique of the Board's April 19, 1991 decision. In its second submission (dated June 12, 1991) the Region provided an alternative method of calculating funding, that is, on the basis of time devoted to new or unexpected matters. As in the case of the Coalition, the different approaches to calculating supplementary funding did not yield significantly different results: under the first approach, the Region calculated that it should have additional funding in the amount of \$157,604.61; under the second approach, \$152,675.92.

There were many aspects of the submissions of the Region and TWL that added further support to the concerns, findings, and conclusions of the Board expressed in its April 19, 1991 decision. Firstly, the Region suggests that it appreciated that the original (O.C.) award was supposed to take the intervenors through the entire hearing²:

¹ The Board could not understand why it should require more time for three counsel to work together in organizing their case and calling their witnesses collectively, than if each counsel were presenting his own witnesses individually.

² It later (at p. 30 its June 6 submission) says, however, that it did not appreciate that the award was to take it through the entire hearing.

... Since the parties had what was thought to be a fixed quantum of funding to do the entire case, it was necessary to get a "fix" on the strengths and weaknesses of the whole case so that *resources could be appropriately allocated* and they would not be in the position of getting, for example, to a later phase only to discover that it was important and they were out of money.

(p. 13, June 6 submission, emphasis added)

The Region states that it had difficulty doing such planning in 1989, at least as far as witnesses were concerned, because it did not have all of the proponent's witness statements until the fall of 1989, and goes on to recount:

In the end, because of circumstances, we fell back to a strategy of dealing with the case one phase at a time because we lacked the manpower and financial resources to deal with the case in a comprehensive manner.

(p. 13, June 6 submission)

Another point referred to in the Board's April 19, 1991 decision was the issue of the relative workload as among the three intervenors' counsel (at p. 17). The Region's submission, not contradicted by the other two intervenors, is that it carried the lead:

Accordingly, Mr. Hodgson [for the Region] took the lead in cross-examination and in argument throughout 1990.

(p. 16, June 6 submission)

This is significant in considering TWL's expenditure of legal time.

As in the case of the Coalition, described above, the Board has considered the further information provided by the Region and the two approaches to calculating funding, and adopts the June 12 approach as more closely according with the principles set out in its April 19, 1991 decision. It accepts the summary compilation in Schedule VI and makes the following assessment for legal costs:

Fees ³ , 1549 hrs x \$83.75/hr	\$129,716
Disbursements, @ 10% of fees	<u>12,972</u>
Total	\$142,688
 GST @7%	 <u>\$9,988</u>
TOTAL	\$152,676

³ Pro-rated from \$200,104.71.

The Region's calculations have not taken into account the April 19, 1991 award, \$24,600.24. To integrate the two awards, that amount has been subtracted and the majority of the Board awards the Region the following, for legal costs:

Fees, 1,299.29 hrs x \$83.75/hr	\$108,815.64
Disbursements, @ 10% of fees	<u>10,881.56</u>
Total	\$119,697.20
 GST @7%	 <u>8,378.80</u>
TOTAL	\$128,076.00

No deduction under s. 7(3)(c) of the IFPA (for funds reasonably available from other sources) is made by the majority of the Board.

Decision of the Majority of the Board, (Kingham, Chair and Thomson, Member) as to Whether the Region Should Contribute Funds or Further Funds

The majority view is that nothing in the Board's previous decision of April 22, 1991 precluded the parties from making further submissions in the matter of legal fees, technical coordinator's fees and funds available from other sources. In light of the additional information provided the majority of the Board feels that a deduction under ss. 7(3)(c) of the I.F.P.A. is not now required, considering all the circumstances.

Section 7(2)(d) of the Intervenor Funding Project Act requires the Board to consider whether the intervenor has made reasonable efforts to raise funding from other sources. In the April 19, 1991 decision the Board found:

"... parties applying for intervenor funding ought to be prepared to contribute a reasonable amount toward their anticipated costs. Such contribution is evidence of an intervenor's commitment and possibly its *bona fides*."

The Board does not resile from this finding, but accepts the current written submissions of the OWMC Steering Committee of the Regional Council of Niagara in the letter signed by Mr. M.H. Boggs on June 6, 1991, to the effect that the \$700,000.00 raised by the Region constitutes a reasonable contribution towards *their anticipated costs* and demonstrates the required *bona fides*. Neither the Township of West Lincoln nor the Ontario Toxic Waste Research Coalition made submissions on this point since the April 19 decision.

Section 7(3)(c) then requires a board, in determining the amount of an award, to deduct from the award funds that are reasonably available to the applicant from other sources. In the decision of April 19, 1991 this Board deducted \$100,000.00 from the award taking account of the circumstances at that time. In light of changed circumstances (in particular the details now provided concerning unanticipated costs incurred by the Region in meeting the OWMC case), the issue now is whether it is reasonable to require the applicant to raise an additional \$100,000.00 to apply to those matters which were unanticipated in the original Order-in-Council.

In their June 6 letter, the Region's OWMC Steering Committee said that the Region cannot afford and should not be asked to contribute an additional \$100,000.00 beyond the \$700,000.00 already spent or committed. The Board must now determine whether such additional funds are "reasonably available to the applicant from other sources" given the amount of money they have already raised to deal with anticipated expenditures for this undertaking which is not of their choosing.

We find that they are not "reasonably available", in the peculiar circumstances of the OWMC hearing and this amended supplementary funding application.

This consideration means that both the \$52,433.22 deducted from legal expenses in the April 19 award and the \$47,566.78 deducted from the expert witness category should be funded by the proponent to cover unanticipated expenses not brought to the attention of the original Order-in-Council funding panel. It is not for this Board to revise or comment on the provisions in either the Order in Council recommendations or the January 1989 IFPA panel findings respecting their consideration of funds for anticipated expenditures, "from other sources", under sections 7(2)(d) or 7(3)(c).

The majority ascribes some significance to the fact that the funding proponent, the Ontario Waste Management Corporation, has not expressed any concern about requests for funds in any of the aforementioned three categories.

The Full Board

The Region's lengthy critique of the Board's April 19, 1991 decision is, in the Board's view, inappropriate and more properly argued in another forum.

3. Township of West Lincoln (TWL)

TWL's application, its position at the funding hearing, and its most recent submissions cause the Board some difficulty. In discussing the question of accounting for funds spent to date, the Board said, at p. 11 of its April 19, 1991 decision:

. . . the Board recognizes and appreciates the problems inherent in it requiring, at this point in the hearing, a full accounting. It would be difficult, and possibly dangerous, for the Board in the midst of the hearing to assess, the reasonableness, for example, of the time spent preparing a witness. That is something that is normally done at the end of the hearing, in considering requests for costs . . . Accordingly, the Board has decided not to require the applicants to account to it now for all of the funds spent to date.

The issue of the Board assessing, during the course of the hearing, the reasonableness of the use of legal time (and therefore funds) is a difficult one. The Board is reluctant, absent a full hearing on costs, to challenge or second-guess the judgment of counsel or the intervenor in deciding how best to allocate counsel's time (and the funding for legal costs) to the intervention. It is preferable, in the Board's view, to allow the intervenor and its counsel the flexibility to make those allocation-of-resource decisions, recognizing that the original

award, unless otherwise stated, is to take the intervenor through the hearing (as it is anticipated).

But if, on an application for supplementary funding, the use of legal time and funding appears to be *prima facie* grossly unreasonable, the Board believes that that should be taken into account in assessing whether supplementary funding ought to be awarded.

The accounting of counsel's time as set out in TWL's submission raises red flags in a number of areas. The Board will go through the categories of legal work and time as set out in the submission.

A. Preliminary and Procedural Matters

After deducting the amount awarded in the April 19, 1991 decision, TWL claims 162.87 hours (\$13,939) in respect of unanticipated procedural and preliminary matters, and the Board accepts that for the purpose of justifying further supplementary funding.

B. Organization of the Fourth Intervenor

TWL counsel spent 311 hours organizing and administering the fourth intervenor, the triparties' collective expert witness fund. This was in addition to "time spent in discussions and meetings of counsel and expert witnesses of the various parties regarding on-going management of consulting activities."

This is also in addition to the time spent by TWL's full-time technical coordinator, Mr. McCallum, in organizing and administering the fourth intervenor.

It was with some reluctance that the Board accepted the Coalition's request for supplementary funding for coordinating and organizing the fourth intervenor, at 145 hours of legal time (submission of the Coalition, at p. 3). It cannot sanction TWL's 311 hours: it is *prima facie* grossly unreasonable. For the purpose of justifying supplementary funding, the Board allows TWL 145 hours⁴, based on the Coalition's use of legal counsel for this work.

C. Inquiry and Contempt Matters

At the supplementary funding hearing, TWL advised the Board that counsel had spent 90 hours preparing for these unanticipated matters, and the Board awarded TWL funds accordingly. The number was revised in TWL's June 10 submission, to 145 hours preparation by counsel and 18 hours by a student. The Board was also advised that the attendance time was 88 hours rather than the 45.5 hours awarded because two counsel were in attendance.

⁴ To calculate the amount, the Board pro-rated the time claimed by Mr. Bell (183/311 hrs) and Mr. Mansell (128/311 hrs) over 145 hours and multiplied by their respective hourly rates, for an award of \$11,643.63.

At some point, the Board will want an explanation as to why having two counsel in attendance was an appropriate use of limited resources, especially in light of TWL's role, relative to the other two parties, in the inquiry and the motion. The Board is not now, however, finding that the time spent was unreasonable, and awards a further \$8,016 under this heading.

Funding and Financing Matters

D. IFPA Funding Matters

TWL counsel spent approximately 105 hours on IFPA funding matters in addition to the time awarded in the April 19, 1991 decision (59 hours). The Board accepts that this was unanticipated and ought to be funded, and awards the further \$8,268 requested.

E(i). Investigation of Further Funding Options

Like the IFPA, the original (O.C.) award limited legal fees to the Legal Aid tariff. TWL attempted to obtain financing from the Region so that it could pay its counsel beyond the Legal Aid rate. It was unsuccessful.

Counsel devoted 63 hours to this task. TWL's technical coordinator was also involved.

In the Board's view, where funding is provided under intervenor funding for legal counsel, the use of those funds and counsel's time should be directly related to the hearing (which would necessarily include the statutorily-mandated funding process under the IFPA). Attempts by counsel on behalf of a client municipality to negotiate financing outside the statutory funding framework are not something that ought to be funded under intervenor funding.

E(ii). Administration of the O.C. Funds

TWL counsel spent 166 hours in the administration of O.C. funding. This is in addition to the time spent by the technical coordinator.

Of the 166 hours, 122 are said to have been unanticipated.

The time spent on funding matters by TWL counsel ($104.92 + 59 + 166 = 329.92$) seems to be somewhat excessive relative to the other two intervenors (209.9 for the Region, and 150.7 for the Coalition).

In the Board's view, where an intervenor has been funded for a full-time technical coordinator, as was the case here, it is *prima facie* grossly unreasonable for counsel to have devoted so much time to the *administration* of funding. TWL's position is comparable to the Coalition's in that both intervenors had technical coordinators. As noted above, the Coalition's counsel devoted 150.7 hours to funding matters (O.C. and IFPA). With this decision and the April 19, 1991 award, the Board has awarded supplementary funding to TWL in respect of approximately 164 hours (of the 329.92 spent), and cannot justify further supplementary funding under this heading.

F. Reporting to the Client

TWL requests \$11,445 under this heading for counsel's time in reporting to the client in respect of unanticipated matters. The Board accepts the request, except with respect to the cost of reporting to the client regarding further funding options (50 hours), and awards a further \$7592.

G. Phase One of Summary Proceedings (Motions)

At the supplementary funding hearing, TWL advised the Board that counsel had spent 320 hours preparing for the motions at the end of Phase I. The Board awarded TWL funds in respect of this unanticipated matter. This estimate "fell short" and was revised upward in TWL's June 10 submission, to 358 hours.

However, in the Region's submission of June 6, the Board is told how this work was divided among the three counsel:

The Intervenor collaborated on a single joint submission. The Region's legal counsel prepared 55 to 60 per cent of that joint submission. The Coalition prepared on the order of 30 per cent of that submission *and the Township contributed the remainder. . . .* The subject matter of the oral submissions reflected accurately the contributions of the three parties to the written argument.

(pp. 5 and 6, emphasis added)

This assessment of the relative contributions of the three counsel was not contradicted by TWL.

Notwithstanding that it did only ten to fifteen per cent of the work on the Phase I motions, TWL's legal time for preparation, at 358 hours, exceeded that of Region's counsel, 345 hours.

The Board in most cases does not know what work each counsel does outside the hearing room. Accordingly it is reluctant, on an application for supplementary funding, to draw conclusions as to the relative contributions to the intervention based only on what it sees before it. In this case, however, the evidence is that what the Board observed on the Phase I motions, that the Region was carrying the bulk of the argument, corresponds with how the preparatory work was divided up among the three counsel.

This use of legal time and funds here by TWL is, in the Board's opinion, *prima facie* grossly unreasonable.

As noted above, the Board has already, in its April 19, 1991 decision, awarded TWL further funding for this matter (320 hours). It cannot, at this point, ask for repayment and it will not set it off against amounts awarded here.

H. MOE Evidence

The Board's April 19, 1991 award in respect of the MOE evidence was apparently \$101 short, and TWL is awarded that amount here.

I. Preparation Time Re: Evidence

i) Prior to the Hearing

TWL claims 143 hours (\$12,010) for pre-hearing preparation time in 1989 beyond what had been expected, and the Board accepts that for the purpose of justifying supplementary funding.

ii) Hearing

TWL requests funding for 82 hours (\$6,868) in 1990. The explanation set out at p. 8, Tab 4 of TWL's submission, does not support the claim, but the Board is prepared to accept that this is a reasonable estimate of time devoted to new matters.

iii) Preparation for Phase II

The Board does not accept TWL's request for further funding in respect of counsel's extra preparatory work in Phase II. The basis for the claim is that extra time was required because TWL counsel alone carried the phase on behalf of the three intervenors, and hence required more time. It seems to the Board, however, that that is a matter among the three counsel; presumably if TWL counsel agreed to do the Phase II work on behalf of the three intervenors, the other counsel will reciprocate at another point in the hearing.

In this respect, the Board would point out that its award of funding assumes that all three counsel have been present at the hearing at all times. That has not always been the case, and to the extent counsel were not all present, the award is generous.

iv) Future Additional Preparation

TWL requests funding for the duration of the hearing at a higher preparation to attendance ratio than the 1.02:1 ratio calculated by the Board in its April 19, 1991 decision from the O.C. Funding Panel's Report.

In the Board's view, the supplementary funding awarded TWL in its April 19, 1991 decision and the decision herein, will provide adequate funding for the TWL's continued involvement in the hearing.

Accordingly, the Board awards TWL the following, for legal costs:

Fees, 908.01 hrs x \$75.37/hr ⁵	\$68,437
Disbursements, @ 10% of fees	6,844
Travel, 89.46 hours x \$43.00/hr	<u>3,847</u>
Total	\$79,128
 GST @ 7%	 <u>5,539</u>
TOTAL	\$84,666

TWL's calculations have taken into account the April 19, 1991 award and this award is *in addition to* that award.

II. TECHNICAL/CONSULTANT COORDINATOR

The view of the majority (Kingham, Chair and Thomson, Member) is that here, as with the "funds reasonably available" matter, the April 19 decision did not preclude further submissions on this matter. In particular, in that decision the Board was critical of failure to take advantage of a ten-week adjournment and a later start of the hearing, based on the evidence available at the supplementary funding hearing.

The Coalition now provides the missing information at page 8 of Mr. Castrilli's June 6, 1991 letter to the Board. He is strongly supported in this matter by the Region which adds that it is now relying on the services of Mr. Jackson as well, having relinquished the services of its own coordinator. The majority of the Board is persuaded by this additional information to provide an additional \$32,400 for the coordinator as follows:

Fees, 724.4 hrs. x \$38/hr	\$27,527.00
Disbursements @ 10% of fees	<u>2,753.00</u>
	30,280.00
GST @ 7%	<u>2,120.00</u>
TOTAL	\$32,400.00

The Board was not persuaded, however, to add funds for the Township's coordinator based on the additional information provided in its written submissions.

Conclusion

In the Region's June 6 submission it requests that "... the Board fund the parties so that there is the equivalent of two full time lawyers on the case..." The Board notes that its current award, together with the April 19 award is sufficient to fund counsel for both the Coalition and the Region on a full time basis for all the projected hearing days to the end of Phase V on a 1:1 basis with respect to preparation and attendance. The Board also notes

⁵ The hours and hourly rate were back-calculated from the total amount awarded.

that both these parties have identified certain phases where they intend to place greater emphasis, in which case the two awards would be sufficient to cover their planned involvement in these phases on a 2:1 preparation to attendance basis. In addition there is the award to TWL which provides funding for more than the phase of apparently greatest interest to it.

The Board's findings on the supplementary funding applications are for the purpose of determining whether supplementary funding under s. 12 of the IFPA ought to be awarded. The findings will not bind the Board on applications for costs. Where matters have not been accepted by the Board as justifying supplementary funding because the use of legal time appears *prima facie* to be have been grossly unreasonable, the intervenor remains free to make a claim for costs in respect of that matter at the end of the hearing.

The Board expects the intervenors to prepare a work plan, of how they will allocate the funds over the remainder of the hearing. It expects the work plan to be adhered to unless there is good reason. The work plan would not have to be provided to the Board unless there is a subsequent application for supplementary funding or costs.

DISSENT (IN PART)

On the issues of whether the Region ought to contribute the sum of \$100,000 to its assessed needs under the IFPA and whether the funding for the Coalition's technical consultant/coordinator can be varied, I respectfully disagree with the opinion of the majority.

With respect to the issue of the Region's contribution, the IFPA requires the Board: (1) to consider whether the intervenor has sufficient financial resources to enable it to adequately represent its interest [s. 7(2)(c)] and whether it has made reasonable efforts to raise funds from other sources [s. 7(2)(d)]; and (2) to deduct from the award funds that are reasonably available to the intervenor from other sources [s. 7(3)(c)].

As noted above, the Board deducted \$100,000 from the Region's supplementary funding award in its April 19, 1991 decision as funds reasonably available to the intervenor from other sources, in accordance with s. 7(3)(c).

The Region argues that it should not have to contribute to its hearing-related expenses beyond the \$700,000 it set aside for the primary purpose of paying its counsel's fees in excess of the Legal Aid rate (the rate prescribed by the IFPA). It suggests that, for the purpose of the award, it ought to be credited with this contribution.

The majority of the Board has now held that the Region should not have to contribute the \$100,000. I cannot agree with majority's view, for four reasons:

1. Unlike certain matters relating to legal expenses, the Board did not, in its April 19, 1991 decision, leave open the issue of the intervenors' contributions under s. 7(3)(c) for further consideration upon better information being provided. It does not have jurisdiction to now re-visit the matter. For the same reason, I do not believe the funding for the Coalition's technical consultant/coordinator can be varied by the Board here.
2. In my view, if an intervenor has resources, it should contribute to its needs as assessed under the IFPA. If it chooses to devote those resources to hearing-related expenses outside the IFPA funding scheme, it ought not to receive credit for those amounts in determining its award under the IFPA. This is in accordance with the only decision I am aware of where the issue has been considered, the *Ontario Hydro Supply and Demand Plan Intervenor Funding Program - Stage II*, EA-90-01, where the funding panel said:

... the panel is of the opinion that it cannot take into account, as a contribution to intervenor funding under the IFPA, contributions to intervenor costs that are not a category authorized to be awarded. Similarly . . . the panel cannot recognize for the purpose of compliance with section 7(3)(c), contributions towards the difference between legal costs at the

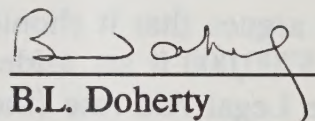
legal aid rate which can be awarded under the IFPA and the legal rates actually paid to intervenors' lawyers.

(p. 14)

The funding panel in that case noted that these expenses might be recovered in costs, and that is the case here as well.

3. The Region is, in effect, demanding that its liability to contribute to its costs be fixed, while the proponent's remain open-ended. In my view, that is an unreasonable position.
4. I do not accept that an intervenor with stated revenues of \$240 million per annum cannot or should not contribute to its needs as assessed under the IFPA.

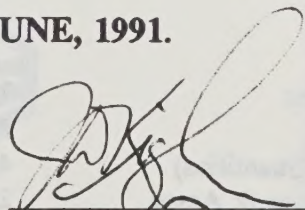
Except with respect to these two matters, I concur with the decision of the majority.

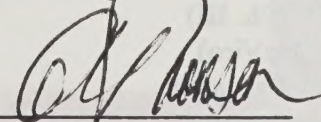

B.L. Doherty

Order

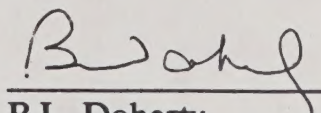
1. Supplementary intervenor funding is awarded to the applicants, the Regional Municipality of Niagara, the Ontario Toxic Waste Research Coalition and the Township of West Lincoln, in accordance with Appendix A. The applications are otherwise dismissed.
2. The awards of supplementary intervenor funding in this decision are in addition to the awards of April 19, 1991.
3. The amounts awarded shall only be used for the purposes set out in Appendix A.
4. Applicants' invoices shall be sent to the Finance and Capital Management, MOE, for processing, and shall be in accordance with "Intervenor Funding Project General Principles for the Submission of Claims."
5. After approval of the invoices amounts awarded shall be paid by the proponent to counsel for each of the applicants, in trust.
6. Any rebates received by the applicants for G.S.T. shall be returned to the Finance and Capital Management Branch for remittance to the proponent.
7. At the end of the hearing or the end of an applicant's participation in the hearing, the applicant shall account to the Board for all funds received under intervenor funding (Order in Council and funding under the IFPA), so that the Board can assess the reasonableness of the expenditures.

DELIVERED AT TORONTO THIS 17TH DAY OF JUNE, 1991.


D.J. Kingham, Ph. D.


G.I. Thomson, Q.C.

And, except with respect to the amounts awarded to the Region relating to its contribution under s. 7(3)(c), and to the Coalition for technical consultant/coordinator costs:


B.L. Doherty

SUPPLEMENTARY FUNDING AWARD - JUNE 17, 1991**CH-87-02 (FAS)**

I. <u>LEGAL EXPENSES</u>	(A) Hours Awarded	(B) Rate/Hr.	(C) (A*B=C) Hrs.*Rate	(D) GST@7%	(E) This Award
A. REGION:					
- Legal Fees	1,299.29	83.75	108,815.64	7,617.09	116,432.73
- Fees-Travel					
- Disbursements					<u>11,643.27</u>
					128,076.00
B. TWL:					
- Legal Fees	908.01	75.37	68,437.00	4,790.28	73,227.28
- Fees-Travel	89.46	43.00	3,847.00	269.05	4,116.05
- Disbursements					<u>7,322.73</u>
					84,666.06
C. COALITION:					
- Legal Fees	983.9	75.37	74,156.54	5,190.96	79,347.50
- Fees-Travel	70.5	45.65	3,215.74	225.10	3,440.84
- Disbursements					<u>7,934.74</u>
					90,723.08
II. <u>TECHNICAL CONSULTANTS</u>					
C. COALITION:					
- Tech. Consulting Fees	724.4	38.00	27,527.62	29,454.55	29,454.55
- Disbursements					<u>2,945.45</u>
					32,400.00

IV. EXPERT WITNESS**A. REGION:**

- ERM/Bliss	2,268.85
- MacViro	2,268.85
- SENES (Quantities)	4,670.21
- C.N. Watson & Assoc.	2,268.85
- P & R Riccius	2,268.85
- SENES (Ph. III)	2,582.18
- P/C (MacViro)	5,906.04
- Env. Management	7,487.21
- Risk Assessment	4,502.30
- Transportation	5,691.41
- Visual	2,609.18
- GST Increases	<u>5,042.85</u>
	47,566.76

CA2ONCH 91C02

Ontario. Consolidated Hearings Act, 1981.
CH-87-02 (FAZ)

IN THE MATTER OF AN UNDERTAKING BY ONTARIO
MANAGEMENT CORPORATION TO ESTABLISH A HAZA
MANAGEMENT TREATMENT AND DISPOSAL SYSTEM..

**RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
UNIVERSITY OF TORONTO**



